

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|-----------------------------|---|--------------------|
| DALLAS TINGLE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civ. No. 06-07-JJF |
| |) | |
| DR. ROBERTA BURNS and SUSAN |) | |
| SHAPELL, |) | |
| |) | |
| Defendants. |) | |

ORDER

WHEREAS, Plaintiff Dallas Tingle, a prisoner incarcerated at the Sussex Correctional Institute, Georgetown, Delaware, filed a complaint pursuant to 42 U.S.C. § 1983 (D.I. 2);

WHEREAS, on February 9, 2006, in screening the case, the Court dismissed without prejudice the claims against Defendants Dr. Roberta Burns and Susan Shapell and gave Plaintiff leave to amend the complaint (D.I. 10);

WHEREAS, in accordance with the Court's instructions Plaintiff filed a motion to amend the complaint to remove Dr. Roberta Burns from the complaint and to add Correctional Medical Services ("CMS") as a defendant (D.I. 11);

WHEREAS, "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served", Fed. R. Civ. P. 15(a), and to date, a responsive pleading has not been served;

THEREFORE, at Wilmington this 21 day of March, 2006, IT IS ORDERED that:

1. The motion to amend complaint (D.I. 11) is GRANTED and Correctional Medical Services is added as a Defendant in this case.

2. Pursuant to the Court's memorandum order of February 9, 2006, Dr. Roberta Burns and Susan Shapell are DISMISSED WITHOUT PREJUDICE as defendants in this action

3. The clerk of the court shall cause a copy of this order to be mailed to Plaintiff.

4. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Plaintiff shall complete and return to the Clerk of the Court an original "U.S. Marshal-285" form for **Defendant Correctional Medical Services**, as well as for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to DEL. CODE ANN. tit. 10 § 3103(c). **Additionally, Plaintiff shall provide the Court with a copy of the complaint (D.I. 2) and the amended complaint (D.I. 11) to be served upon Correctional Medical Services and the attorney general. Plaintiff is notified that the United States Marshal will not serve the complaint and amended complaint until all "U.S. Marshal 285" forms have been received by the Clerk of the Court. Failure to provide a copy of the complaint, the amended complaint, and the "U.S. Marshal 285" forms for Correctional Medical Services and the attorney general within 120 days from the date of this**

order may result in the complaint being dismissed or Defendant being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

5. Upon receipt of the form(s) required by paragraph 4 above, the United States Marshal shall serve a copy of the amended complaint, this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the Defendants identified in the 285 forms.

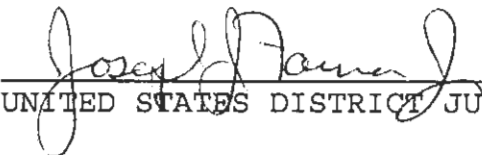
6. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a Defendant, the United States Marshal shall personally serve said Defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

7. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, the amended complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a Defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

8. No communication, including pleadings, briefs, statement of position, etc., will be considered by the Court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

9. **NOTE: ***** When an amended complaint is filed prior to service, the Court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). *******

10. **NOTE: ***** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. *******


UNITED STATES DISTRICT JUDGE